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behalf of herself and all others similarly situated

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 ROBERTA WATTERSON, on behalf of
21 herself and all others similarly situated,

22 Plaintiffs,

23 v.

24 GARFIELD BEACH CVS, LLC, and
25 DOES 1 through 50,

26 Defendants.

Case No. 3:14-cv-01721-HSG

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not
7 confer blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or items that
9 are entitled to confidential treatment under the applicable legal principles. The parties further
10 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
11 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth
12 the procedures that must be followed and the standards that will be applied when a party
13 seeks permission from the court to file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information
18 (regardless of how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and
21 House Counsel (as well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates
23 information or items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.5 Disclosure or Discovery Material: all items or information,
26 regardless of the medium or manner in which it is generated, stored, or maintained
27 (including, among other things, testimony, transcripts, and tangible things), that are produced
28 or generated in disclosures or responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this
5 action. House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.8 Non-Party: any natural person, partnership, corporation,
8 association, or other legal entity not named as a Party to this action.

9 2.9 Outside Counsel of Record: attorneys who are not employees of
10 a party to this action but are retained to represent or advise a party to this action and have
11 appeared in this action on behalf of that party or are affiliated with a law firm which has
12 appeared on behalf of that party.

13 2.10 Party: any party to this action, including all of its officers,
14 directors, employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure
17 or Discovery Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their
21 employees and subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or extracted from

Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
3 to unnecessarily encumber or retard the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it
6 designated for protection do not qualify for protection, that Designating Party must promptly
7 notify all other Parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise
9 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
10 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under
11 this Order must be clearly so designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or
14 electronic documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that
16 contains protected material. If only a portion or portions of the material on a page qualifies
17 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
18 by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents or materials available for
20 inspection need not designate them for protection until after the inspecting Party has
21 indicated which material it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be deemed
23 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied
24 and produced, the Producing Party must determine which documents, or portions thereof,
25 qualify for protection under this Order. Then, before producing the specified documents, the
26 Producing Party must affix the "CONFIDENTIAL" legend to each page that contains
27 Protected Material. If only a portion or portions of the material on a page qualifies for
28

1 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
2 making appropriate markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Designating Party identify on the record, before the close of the
5 deposition, hearing, or other proceeding, all protected testimony.

6 (c) for information produced in some form other than documentary
7 and for any other tangible items, that the Producing Party affix in a prominent place on the
8 exterior of the container or containers in which the information or item is stored the legend
9 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
10 protection, the Producing Party, to the extent practicable, shall identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an
13 inadvertent failure to designate qualified information or items does not, standing alone,
14 waive the Designating Party’s right to secure protection under this Order for such material.
15 Upon timely correction of a designation, the Receiving Party must make reasonable efforts to
16 assure that the material is treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
19 designation of confidentiality at any time. Unless a prompt challenge to a Designating
20 Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
21 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
22 does not waive its right to challenge a confidentiality designation by electing not to mount a
23 challenge promptly after the original designation is disclosed.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process by providing written notice of each designation it is challenging and
26 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has
27 been made, the written notice must recite that the challenge to confidentiality is being made
28 in accordance with this specific paragraph of the Protective Order. The parties shall attempt

1 to resolve each challenge in good faith and must begin the process by conferring directly (in
2 voice to voice dialogue; other forms of communication are not sufficient) within 14 days of
3 the date of service of notice. In conferring, the Challenging Party must explain the basis for
4 its belief that the confidentiality designation was not proper and must give the Designating
5 Party an opportunity to review the designated material, to reconsider the circumstances, and,
6 if no change in designation is offered, to explain the basis for the chosen designation. A
7 Challenging Party may proceed to the next stage of the challenge process only if it has
8 engaged in this meet and confer process first or establishes that the Designating Party is
9 unwilling to participate in the meet and confer process in a timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
11 without court intervention, the Designating Party shall file and serve a motion to retain
12 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
13 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
14 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
15 Each such motion must be accompanied by a competent declaration affirming that the
16 movant has complied with the meet and confer requirements imposed in the preceding
17 paragraph. Failure by the Designating Party to make such a motion including the required
18 declaration within 21 days (or 14 days, if applicable) shall automatically waive the
19 confidentiality designation for each challenged designation. In addition, the Challenging
20 Party may file a motion challenging a confidentiality designation at any time if there is good
21 cause for doing so, including a challenge to the designation of a deposition transcript or any
22 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and confer
24 requirements imposed by the preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
27 harass or impose unnecessary expenses and burdens on other parties) may expose the
28 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality

1 designation by failing to file a motion to retain confidentiality as described above, all parties
 2 shall continue to afford the material in question the level of protection to which it is entitled
 3 under the Producing Party's designation until the court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material
 6 that is disclosed or produced by another Party or by a Non-Party in connection with this case
 7 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 8 Material may be disclosed only to the categories of persons and under the conditions
 9 described in this Order. When the litigation has been terminated, a Receiving Party must
 10 comply with the provisions of section 13 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
 12 location and in a secure manner that ensures that access is limited to the persons authorized
 13 under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 15 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
 16 Party may disclose any information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this
 18 action, as well as employees of said Outside Counsel of Record to whom it is reasonably
 19 necessary to disclose the information for this litigation and who have signed the
 20 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House
 22 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
 23 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
 24 A);

25 (c) Experts (as defined in this Order) of the Receiving Party
 26 to whom disclosure is reasonably necessary for this litigation and who have signed the
 27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order

1 issued, unless the Party has obtained the Designating Party's permission. The Designating
 2 Party shall bear the burden and expense of seeking protection in that court of its confidential
 3 material – and nothing in these provisions should be construed as authorizing or encouraging
 4 a Receiving Party in this action to disobey a lawful directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
 6 PRODUCED IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced
 8 by a Non-Party in this action and designated as "CONFIDENTIAL." Such information
 9 produced by Non-Parties in connection with this litigation is protected by the remedies and
 10 relief provided by this Order. Nothing in these provisions should be construed as
 11 prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request,
 13 to produce a Non-Party's confidential information in its possession, and the Party is subject
 14 to an agreement with the Non-Party not to produce the Non-Party's confidential information,
 15 then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the
 17 Non-Party that some or all of the information requested is subject to a confidentiality
 18 agreement with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the
 20 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a
 21 reasonably specific description of the information requested; and

22 (3) make the information requested available for inspection
 23 by the Non-Party.

24 (c) If the Non-Party fails to object or seek a protective order from
 25 this court within 14 days of receiving the notice and accompanying information, the
 26 Receiving Party may produce the Non-Party's confidential information responsive to the
 27 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall
 28 not produce any information in its possession or control that is subject to the confidentiality

1 agreement with the Non-Party before a determination by the court. Absent a court order to
 2 the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
 3 court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 6 Protected Material to any person or in any circumstance not authorized under this Stipulated
 7 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
 8 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized
 9 copies of the Protected Material, (c) inform the person or persons to whom unauthorized
 10 disclosures were made of all the terms of this Order, and (d) request such person or persons
 11 to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
 12 Exhibit A.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
 14 OTHERWISE PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
 16 inadvertently produced material is subject to a claim of privilege or other protection, the
 17 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
 18 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established
 19 in an e-discovery order that provides for production without prior privilege review. Pursuant
 20 to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
 21 effect of disclosure of a communication or information covered by the attorney-client
 22 privilege or work product protection, the parties may incorporate their agreement in the
 23 stipulated protective order submitted to the court.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right
 26 of any person to seek its modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of
 28 this Protective Order no Party waives any right it otherwise would have to object to

disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product,

1 even if such materials contain Protected Material. Any such archival copies that contain or
2 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
3 (DURATION).

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 DATED: April 6, 2015

SETAREH LAW GROUP

7 By: /s/ Shaun Setareh
8 Neil Larsen
9 Shaun Setareh
10 Attorneys for Plaintiff
11 ROBERTA WATTERSON

12
13 DATED: April 6, 2015

LITTLER MENDELSON

14 By: /s/ Philip Simpkins
15 Philip A. Simpkins
16 Attorneys for Defendant
17 GARFIELD BEACH CVS, LLC

18
19 I hereby attest, pursuant to Civil Local Rule 5-1(i)(3) that I have obtained
20 concurrence in the filing of this document from each of the signatories shown above.

21
22 Dated: April 6, 2015

23 By: /s/ Philip Simpkins
24 PHILIP A. SIMPKINS

25
26 PURSUANT TO STIPULATION, IT IS SO ORDERED.

27
28 DATED: 4/8/2015


U.S. District Judge Haywood S. Gillingham, Jr.

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name],
 of _____ [full address], declare
 under penalty of perjury that I have read in its entirety and understand the Stipulated
 Protective Order that was issued by the United States District Court for the Northern District
 of California on _____ [date] in the case of *Roberta Watterson v. Garfield
 Beach CVS, LLC*, Case No. 3:14-cv-01721-HSG. I agree to comply with and to be bound by
 all the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of contempt.
 I solemnly promise that I will not disclose in any manner any information or item that is
 subject to this Stipulated Protective Order to any person or entity except in strict compliance
 with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Northern District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after termination of
 this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____